

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
                                  STATE OF WASHINGTON

3   IN THE MATTER OF                                   )  
4   H A. DAUBENSPECK (M/V IRONHEAD),                )

                                  Appellant,                )

5                                   v                                )

6   PUGET SOUND AIR POLLUTION                        )  
7   CONTROL AGENCY,                                    )

8                                   Respondent.                )

PCHB No. 987

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

9  
10       PER W. A. GISSBERG:

11       A formal hearing was held in Seattle, Washington, on December  
12   6, 1976, on the appeal of a \$100.00 civil penalty arising from an  
13   alleged violation of Section 9.03(b) of respondent's Regulation I.  
14   All Board members were present.

15       Appellant H. A Daubenspeck appeared pro se. Respondent  
16   appeared by its attorney, Keith D McGoffin.

17       Having heard the testimony and considered the exhibits and  
18   the statements of the parties, the Board makes and enters the following

FINDINGS OF FACT

I

Respondent, pursuant to RCW 43 21B 260, has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto

II

On February 5, 1976, one of respondent's inspectors, while on routine patrol and not in consequence of any specific complaint, observed a white smoke emission for six consecutive minutes from the stack of appellant's ship, M/V IRONHEAD. The smoke was of an observed opacity of between 100 and 75% and gradually diminished thereafter.

III.

The smoke plume was caused by the starting up of the ship's diesel engine about 1:30 p.m. Some two hours earlier appellant's secretary had telephoned her complaint to respondent that an adjacent shipyard was causing smoke emissions. That complaint, however, had not been communicated to the inspector who made the observation described above

IV.

Respondent's Section 9.03(b) of Article 9 of respondent's Regulation I makes it unlawful for any person

to cause or allow the emission of any air contaminant for a period or periods aggregating more than three (3) minutes in any one hour, which is

(2) of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Subsection 9.03(b)(1) . . .

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER - 2

1 In other words it is unlawful to discharge any contaminant more  
2 opaque than its equivalent on the Ringlemann Chart, i.e. 20% density.

3 V.

4 Respondent's inspector attempted to personally deliver a Notice  
5 of Violation to appellant, but he was ordered to leave the premises.  
6 The Notice of Violation and civil penalty in the amount of \$100 00  
7 was thereafter delivered to appellant by certified mail, from which  
8 this appeal was taken.

9 VI.

10 Appellant did not know about the provisions of respondent's  
11 Section 9.16, which, under circumstances available to him, excuses  
12 what would otherwise be a violation of respondent's smoke emission  
13 regulations when the emissions are "a direct result of start ups."  
14 When informed of such at the hearing on this appeal, appellant, in  
15 effect, contended that respondent would need additional personnel  
16 to receive telephone calls if he and others similarly situated called  
17 the agency each time there was a start up of one of "135 boats "  
18 Appellant was also vexed at what he assumes, but did not prove, is  
19 an uneven handed enforcement of air pollution regulations

20 VII.

21 Any Conclusion of Law hereinafter stated which may be deemed a  
22 Finding of Fact is hereby adopted as such.

23 From these Findings the Pollution Control Hearings Board comes  
24 to these

25  
6  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 3

1 CONCLUSIONS OF LAW

2 I

3 Appellant violated Section 9 03(b) of respondent's Regulation I.

4 II

5 The thrust of appellant's argument seems to be that since  
6 there is "bound to be some pollution" and because it is necessary for  
7 his boats to operate, the agency should not enforce its regulations  
8 as to him We do not agree Air pollution poses a clear danger to  
9 public health Respondent's regulations are designed to secure and  
10 maintain such levels of air quality as will protect human health and  
11 safety as well as promote the economic and social development of the  
12 Puget Sound area

13 III.

14 If, having been advised of the exculpatory provisions of  
15 Section 9 16, appellant believes the provisions thereof are nonetheless  
16 onerous as to him because of the frequency of boat start ups, it  
17 might be worthwhile for him to initiate a discussion with respondent  
18 aimed at procuring a variance from its regulations governing the  
19 duration of discharge of air contaminants from his boats

20 IV

21 The \$100 00 civil penalty imposed by respondent, being 2/5ths  
22 of the maximum which it could have imposed, is reasonable and should  
23 be affirmed

24 V

25 Any Finding of Fact which should be deemed a Conclusion of Law

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER - 4


1 is hereby adopted as such.


2 Therefore, the Pollution Control Hearings Board issues this  
3 ORDER

4 The civil penalty of \$100.00 imposed by respondent upon appellant  
5 is affirmed.

6 DATED this 17<sup>th</sup> day of December, 1976.

7 POLLUTION CONTROL HEARINGS BOARD

8   
9  
10 ART BROWN, Chairman

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13 W. A. GISSBERG, Member

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16 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 5